PREFACE

THIS BOOK constitutes an experiment in collaborative research between a teacher and her graduate students. It is an attempt to bring into focus a major area of interest and exploration in the anthropology of law—the disputing process—as the first step in a wider inquiry. These essays concentrate on disputes between people of the same culture, disputes between people who for the most part know each other and who expect to interact in some fashion in the future regardless of the outcome of the dispute. A second study of the disputing process, concentrating on people who are strangers to each other, will result in a companion volume which will deal with alternatives to the judicial system in the United States. The present volume and the one forthcoming together cover the range of relations that are found between disputing parties the world over, the range of sources of dispute, and what is done about disputes.

During 1963–64, while a fellow at the Center for Advanced Study in the Behavioral Sciences in Stanford, California, I reflected about the directions in which anthropological research on law should be pointed. The ideas for a project on comparative village law emerged as a result of a seminar held that year at the Center in conjunction with a group of students from Berkeley and colleagues at the Center (Paul Bohannon and Herma Kay) on the methodological problems involved in comparing the law-ways of different people.

This project, which was to be called the Berkeley Village Law Project, had several aims: ethnographic, comparative, and pedagogical.

Although in 1964 there were already several excellent descriptions of the law of different peoples, many of which had appeared during the previous decade (Hoebel 1954, Howell 1954, Smith and Roberts 1954, Gluckman 1955, Bohannan 1957, Pospisil 1958, Berndt 1962, and Gulliver 1963), I felt that the ethnographies reported on such different organizational and cultural levels, using quite different methodologies, and had such varying intellectual aims that for comparative purposes the available data base was not sufficient. In a survey of developments in the anthropological study of law (1965b) I began to outline a perspective for our work. Several assumptions informed our approach at the beginning: (1) there is a limited range of dispute within any particular society; (2) a limited number of formal public procedures are used by human societies in the prevention or handling of grievances (e.g., courts, contests, ordeals, go-betweens, etc.); (3) the disputants have a choice in the number and modes of settlement (e.g., arbitration, negotiation, mediation, adjudication, coercion, and avoidance); (4) the range of manifest and latent functions of law vary cross-culturally. We were interested in understanding the conditions that defined the presence and use of specific dispute-resolving procedures. We would concentrate on one function of law—the management of disputes. Because the modes of settlement are limited in number, dispute processes would offer a good starting place for comparison.

Our description of law was to be cast in the context of the broader patterns of social control, though not to be equated with social control, and our understanding of social control was to be cast in the broader framework of the culture and social organization of the societies under study. We agreed that the core material for comparison would come from a quantitative and qualitative sampling of dispute cases in each society.

The dispute case, unlike any particular form of dispute processing or any particular class of disputes, is present in all societies. Universally such cases share most of the following components, depending on what stage the dispute is in: that which is disputed

(property, custody of children, theft, homicide, marital obligation, and so on); the parties to the dispute (sex, age, rank status, and relation between parties); presentation of the dispute (before a remedy agent such as a judge, go-between, lineage head); procedure or manner of handling the dispute; the outcome; the termination of the grievance; and the enforcement (or nonenforcement) of the decision. Mapping the component parts of a case had been attempted using materials from my Zapotec fieldwork (Nader 1964a), so that the sociological aspects of conflict could be systematically discerned; the results were useful as springboards for comparative work (Nader and Metzger 1963, Nader 1965b).

The work was to be intensively comparative. Each fieldworker was to attempt an intrasocietal comparison before any general attempt to compare the various societies one with the other. In order to permit comparison across society, the data had to be collected in as systematic a way as possible, which meant that prior to departure for the field the fieldworkers needed to agree upon what they would collect and within what framework the collection of data would be undertaken. I wanted to train students who would contribute to the development of a general theory about behavior as it pertains to law. I was concerned with forms of dispute management and styles of dispute management as they relate to questions of rank, status, stratification, and cultural diversity.

Originally my intention was, in addition, to contribute to the way in which research might be conducted by graduate students so that individual contributions had cumulative impact. Anthropological fieldwork had clearly benefited throughout the previous five or six decades from a pattern of individual fieldworkers choosing a topic of their interest which they then pursued in independent fieldwork. In the early days this was, I think, an appropriate mode. But in recent years, I felt, anthropology seemed to be rediscovering itself: the work was becoming more redundant than cumulative. I asked myself if something more valuable might not be gained by cooperation. The Harvard values study (Vogt and Albert 1966) and the pioneer work on child rearing by John and Beatrice Whiting (J. W. M. Whiting et al. 1953; B. Whiting 1963) were models of such cooperation. In training

students in the anthropology of law I believed we would accomplish what needed to be accomplished at that point in time if we worked as a group with a formal designation. Calling it the Berkeley Village Law Project would, I believed, increase the chances that students would communicate with each other, and with their teacher. In addition, irregular group meetings and the assigning of younger graduates to the dissertation committees of the older graduate students insured a variety of interchange. However, such an effort needed to be systematic and rigorous if the impact was to be cumulative. At the same time, I was aware that to be overly rigid and insistent upon common modes of data gathering, given the state of knowledge in 1964, might cause us to lose something. For the most part the fieldworkers were quick to say when an approach or method was inappropriate. For example, it soon became clear to our first fieldworker, Klaus Koch, that the case method as first defined was not as ideal a unit for comparison as it had been thought. I had worked in a society where the presence of a court system made clear when a case began and ended. But among the Jalé of New Guinea, as Koch correctly observed, it was not clear when a case began and when it ended. The extended-case method as illustrated by Colson (1953) was more appropriate there.

The fieldwork reported upon in this book took place over a ten-year period, from 1965 to 1975. The fieldworkers in this project chose where they wanted to go, a trade-off on the agreement that we would look at comparable types of material within a common framework. The societies ranged geographically. In Asia, Klaus Koch (1967) worked in Indonesian New Guinea. Nancy Williams (1973) worked in Australia. Four students went to Europe: Barbara Yngvesson (1970) to Scandinavia, Harry Todd (1972) to Germany, Julio Ruffini (1974) to Sardinia, and Carl McCarthy to Liechtenstein (only to later complete his dissertation on O.E.O. legal services in the United States [1974]). Bruce Cox (1968) worked among the Hopi Indians of the United States. Three worked in the Middle East: June Starr (1970) in Turkey, John Rothenberger (1970) in an all-Muslim Lebanese village, and Cathie J. Witty (1975) in a Lebanese village with an almost equal proportion of Muslim and Christian inhabi-

tants. Two worked on opposite sides of the African continent: Michael Lowy (1971) in Ghana and Richard Canter (1976) in Zambia. Two students went to Latin America: Sylvia Forman (1972) to Ecuador, and Philip Parnell (1978) to Mexico. Of these fourteen studies, all of which have been completed as Ph.D. dissertations at the University of California, Berkeley, ten are represented in this volume.

At the outset a primary research interest was in social morphology—the forms used for dispute processing and their concomitant interrelation with specific forms of social groupings (Nader 1964b, 1965a). A geographic distribution was not necessary to achieve the range of variation in types of dispute-resolving agencies. Theoretically, we could have stayed within a single continent or perhaps even within a single culture area to achieve such a sample. Epstein's *Contention and Dispute* (1974) is such an attempt for Melanesia. The papers in this volume represent the known range of types of remedy agents. There is an absence of third parties and direct confrontation among the Jalé of New Guinea. Courts are present and are the predominant remedy agents in Zambia, Ghana, and Mexico. Societies in which other third-party forms are preferred to courts at the local level are described for Turkey, Lebanon, Bavaria, Sardinia, and Scandinavia, even though courts were available and were sometimes used by the villagers.

As the studies proceeded it became clear that if we wished to understand choice—if we wished to understand why one remedy agent is preferred over another, or why certain forms had developed in the first place, or why certain outcomes and strategies were prevalent—we needed to describe and analyze our data in the context of an ongoing process. Focus on the process meant that disputing in the context of social groupings had to be understood in its various phases or stages both before and after it reached a recognizable public forum. Hyperactivity in legal behavior has to be understood in the context of rapid social change, similar to findings in the religious sphere (Wallace 1966) that suggest that an increase in religious activity may often accompany periods of rapid change. Indeed, there is strong evidence that social change may induce behavior characterized by involuted legal activity—although that activity, from the point of

view of a monopolistic nation-state's legal system, is sometimes characterized as illegal.

We hope that our contributions will be of interest and of use to a world wider than that of the anthropologist-scholar. There is much talk of law in the governance of people in the world today. In the developing nations law is seen as a means of entrenching power positions. The people of these developing nations are experiencing difficulties traceable to using conflicting and changing systems of law. Imposition of centralized, professionalized, nation-state law is decreasing traditional access to law.

In the United States, as well, there is a crisis that is challenging the position of law as defense, as protection, as orderly change. We hope there will come a time when the anthropological understanding of law in the United States is at least equivalent to our understanding of customs surrounding law among the peoples described in this book, and that the barriers to implementing our knowledge will decrease.

Laura Nader
Berkeley, California
December 1977